

November 30th, 2023.

Ref: Submission for Special Rapporteur's call for inputs on corporate accountability in the context of human rights and climate change

Dear Mr. Special Rapporteur Ian Fry,

This submission, on behalf of Alana Institute¹ and the One Ocean Hub², presents contributions from the perspective of children's rights about corporate accountability in the context of human rights and climate change. Rather than addressing each specific question individually, this contribution will concentrate on outlining the parameters of children's rights within the broader theme of corporate accountability in the context of human rights and climate change.

I. Corporate accountability and climate change from a Child Rights-based perspective

General Comment No. 26 (2023) on children's rights and the environment, with a special focus on climate change, explicitly states that "businesses have the responsibility to respect children's rights in relation to climate change."³ Business responsibility comes from the fact that they are a source of significant environmental damage, contributing to abuses of children's rights particularly in terms of short- and long-term infringements linked to the consequences of climate change, and possibly also the choice of measures to mitigate or adapt to climate change.

First of all, it is essential to recognize that the business' sector operations have a direct impact on children in various ways. The effects of business activities directly impact on their routines, experiences and life-long opportunities. For instance, businesses contribute significantly to greenhouse gas emissions, which pose significant climate-driven impacts and adversely affect children's rights. The greenhouse gas emissions disproportionately affect children, since they "require more food and water per unit of their body weight, are less able to survive extreme weather events, and are more susceptible to toxic chemicals, temperature changes, and diseases, among other factors"⁴. Other examples are industrial air and water

¹ www.alana.org.br

² <https://oneoceanhub.org/>

³ Committee on the Rights of the Child. *General Comment No. 26 (2023) on children's rights and the environment, with a special focus on climate change*, para. 107.

⁴ UNICEF. *One billion children at 'extremely high risk' of the impacts of the climate crisis* - UNICEF. 19 August 2021. Available at:

pollution, and unsustainable agriculture and fishing practices, and any other business activities that lead to biodiversity loss (including marine biodiversity), which have negative impacts on children's rights to development, health, food, education and culture.⁵

The United Nations Guiding Principles on Business and Human Rights (UNGPs) identify children as a particularly vulnerable group of rights holders who require special attention from business enterprises that need to consider additional standards where they may have adverse human rights impacts on them. The Committee on the Rights of the Child has already addressed this matter in its general comments as General Comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights which recognizes that business may have negative impacts that are directly related to the right to life, survival, and development of children (article 6, Convention on the Rights of the Child), since "environmental degradation and contamination arising from business activities can compromise children's rights to health, food security and access to safe drinking water and sanitation"⁶. Further, General Comment No. 26 (2023) on children's rights and the environment with a special focus on climate change states that business operations are a source of significant environmental damage, contributing to child rights abuses⁷.

Children do not only suffer in different ways from the impacts of business activities, but they are also the most affected by climate change resulting from them. Approximately 1 billion children live in one of the 33 countries classified as "extremely high-risk" in terms of exposure to climate and environmental shocks⁸. Children are directly and indirectly affected by climate change and suffer these effects in a disproportional way in different parts of the world since the 33 "extremely high-risk" countries collectively emit just 9% of global CO2 emissions⁹. It should be emphasized that air pollution is directly associated with climate change and is aggravated by fires and the burning of fossil fuels linked to the business sector.

Given the scenario presented, it is evident that children's human rights are widely and disproportionately affected by business activities, particularly within the context of climate change. In the light of the recent recognition of the importance of the ocean under the international climate change regime,¹⁰ it is equally important to underscore how business

<https://www.unicef.org/press-releases/one-billion-children-extremely-high-risk-impacts-climate-crisis-unicef>. Accessed on Nov 14/ 2023.

⁵ M Strand et al, 'PROTECTING CHILDREN'S RIGHTS TO DEVELOPMENT AND CULTURE BY RE-IMAGINING 'OCEAN LITERACIES' (2023 forth) International Journal of Children's Rights, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4506603.

⁶ Committee on the Rights of the Child. *General comment No. 16 (2013)* on State obligations regarding the impact of the business sector on children's rights, para. 19.

⁷ Committee on the Rights of the Child. *General Comment No. 26 (2023)* on children's rights and the environment, with a special focus on climate change, para. 79.

⁸ UNICEF. *One billion children at 'extremely high risk' of the impacts of the climate crisis* - UNICEF. 19 August 2021. Available at: <https://www.unicef.org/press-releases/one-billion-children-extremely-high-risk-impacts-climate-crisis-unicef>. Accessed on Nov 14/ 2023.

⁹ UNICEF. *The Climate Crisis is a Child Rights Crisis*. 2021. Available at: <https://www.unicef.org/media/105376/file/UNICEF-climate-crisis-child-rights-crisis.pdf>. Accessed on Nov 14/ 2023.

¹⁰ Morgera and Lennan, 'Strengthening Intergenerational Equity at the Ocean-Climate Nexus: Reflections on the UNCRC General Comment No.26' (2022) 52 Environmental Law and Policy 445-459;

activities in the marine sectors (such as shipping, large-scale fisheries¹¹ and deep-seabed mining¹²) can affect children's human rights at the ocean-climate nexus.¹³

II. The main challenges of corporate accountability and opportunities for a child rights-based approach

First of all, there exist general barriers hindering the full realization of children's human rights, such as their limited influence on governance systems and the obstacles they face when seeking judicial remedies for rights violations. Additionally, specific challenges related to corporate accountability arise such as the transnational nature of business activities leading to negative impacts in the context of human rights and climate change. The direct consequences of their operations coupled with the indirect effects manifested in the phenomenon of climate change, pose a transboundary and global threat to children's rights.

It is also necessary to consider the high level of international protection afforded to foreign investors, including in the blue economy,¹⁴ which often limit the opportunities for States to protect human rights and take effective climate change action.¹⁵ This has been recently underscored both by the UN Special Rapporteur on Human Rights and the Environment,¹⁶ and by the UN Working Group on Business and Human Rights,¹⁷ including at the ocean-climate nexus.

As demonstrated in the previous section, the impacts of business activities are not uniformly distributed among all children. This inequality becomes especially apparent in the context of climate change, since not only children in general are the most affected by it, but specific groups of children, such as children from the global south and non-white children suffering distinctly and disproportionately consequences.¹⁸ The existence of double standards

Morgera et al, 'Ocean-based climate action and human rights implications under the international climate change regime' (2023) 38(3) *The International Journal of Marine and Coastal Law* 411-446 https://brill.com/view/journals/estu/38/3/article-p411_2.xml.

¹¹ Nakamura, Diz and Morgera, "International legal requirements for environmental and socio- cultural assessments for large-scale industrial fisheries" (2022) 31 *RECIEL* 336-348 <https://onlinelibrary.wiley.com/doi/full/10.1111/reel.12462>.

¹² Morgera and Lily, Public participation at the International Seabed Authority: An international human rights law analysis' (2022) 31 *RECIEL* 374-388, <https://onlinelibrary.wiley.com/doi/epdf/10.1111/reel.12472>

¹³ Shields et al, 'Children's Human Right to be Heard at the Ocean-Climate Nexus' (2023) 38(3) *The International Journal of Marine and Coastal Law* 545-580 https://brill.com/view/journals/estu/38/3/article-p545_6.xml?ebody=pdf-67975

¹⁴ L Cotula and T Berger, "Blue Economy: Why We Should Talk about Investment Law" (IIED/One Ocean Hub 2020).

¹⁵ Tienhaara and L Cotula, "Raising the cost of climate action? Investor-state dispute settlement and compensation for stranded fossil fuel assets" (IIED, 2022).

¹⁶ UN Doc A/78/168, para 56.

¹⁷ UN Doc A/78/155), para 44.

¹⁸ UNICEF. *Children in 98 per cent of African countries at high or extremely high risk of the impacts of climate change*. 2023. Available at: <https://www.unicef.org/press-releases/children-98-cent-african-countries-high-or-extremely-high-risk-impacts-climate#:~:text=According%20to%20a%20UNICEF%20report,the%20impacts%20of%20climate%20change.>>. Accessed on Nov 16/2023.

UNICEF. *9 out of 10 children in Latin America and the Caribbean are exposed to at least two climate and environmental shocks*. Available at:

in corporate policies and the implementation of discriminatory measures by businesses are directly linked to these inequalities¹⁹.

It is therefore essential that business due diligence fully integrates the respect of children's human rights, by:

- having an explicit policy on preventing, mitigating and remediating climate change-related impacts on children's rights from their own activities, business relationships and supply chains;
- comprehensively assessing, on an ongoing basis, actual and potential adverse climate change-related impacts on children's rights arising from their own activities, business relationships and supply chains on children's human rights;
- integrating the findings of these impact assessments into internal decision-making and taking appropriate actions, such as avoiding export of waste, plastic pollution that diminishes the capacity of the ocean to contribute to climate mitigation,²⁰ unsustainable large-scale fishing practices, and the consumption of products that contribute to deforestation;
- In instances where violations of children's rights are identified, taking immediate steps to prevent further harm to children's health and development and providing effective remedy in a timely and effective manner;
- tracking the effectiveness of their actions to ensure adequate responses to identified impacts on children's human rights, and transparently communicating assessments, actions and results externally;
- establishing company-level grievance mechanisms that are accessible and transparent.

Ensuring a specific and focused consideration of children's rights in business operations suggests that a child rights-based approach must be placed at the core of the business activities. This approach places the Convention on the Rights of the Child (CRC) as the comprehensive and holistic framework governing all actions concerning children. A child rights-based approach assigns legal standards and accountability in the realization of children's rights regarding the idea that "the process of realizing children's rights is as important as the result"²¹, so that all actions by the public or private sector must recognize children as rights holders and active actors in claiming their rights.

<<https://www.unicef.org/lac/en/press-releases/children-latin-america-and-caribbean-are-exposed-climate-climate-environmental-shocks>>. Accessed on Nov 16/2023.

UNICEF. *Children in four South Asian countries at 'extremely high risk' of the impacts of the climate crisis*. 2021. Available at:

<<https://www.unicef.org/rosa/press-releases/children-four-south-asian-countries-extremely-high-risk-impacts-climate-crisis>>. Accessed on Nov 16/2023.

¹⁹ OXFAM. *Rigged Rules and Double Standards*. Available at: <<https://oxfamilibrary.openrepository.com/bitstream/handle/10546/112391/cr-rigged-rules-double-standards-010502-en.pdf?sequence=18>>. Accessed on Nov 16/ 2023.

²⁰ Morgera and Shield, INFO-SHEET: CHILDREN'S HUMAN RIGHTS & OCEAN PLASTICS (2022), https://oneoceanhub.org/wp-content/uploads/2022/06/Information-sheet_6.pdf

²¹ Committee on the Rights of the Child. *General Comment No. 26 (2023) on children's rights and the environment*, with a special focus on climate change, para. 7.

In the context of environment and climate change, the Committee on the Rights of the Child asserts that a child rights-based approach leads to a “virtuous circle”²² which means that the protection and guarantee of the effective exercise by children of their rights results in policies that are more compliant with rights, and consequently, more effective and attuned to reality.

III. The primary consideration of the best interest of the child

The framework established by the child rights-based approach should always be aligned with the principle of the best interest of the child (article 3), which has been specifically identified by the Committee on the Rights of the Child as a pivotal for the implementation of all children’s rights²³. The Convention on the Rights of the Child stipulates that “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration” (article 3.1).

The mention of “public or private social welfare institutions”, according to General comment No. 14 (2013), “should not be narrowly construed or limited to social institutions *stricto sensu*, but should be understood to mean all institutions whose work and decisions impact on children and the realization of their rights”.²⁴ Also, General Comment No. 16 (2013) emphasizes that the Committee recognizes that duties and responsibilities to respect the rights of children extend in practice beyond the State and State-controlled services and institutions and apply to private actors and business enterprises.²⁵ Therefore, businesses are bound by the provisions of the Convention on the Rights of the Child with extremely specific and urgent outlines, especially in the context of climate change, since their impacts are large and last over time and generations.

In this sense, the best interest of the child can be applied as a legal standard for all cases involving children and is aimed “at ensuring both the full and effective enjoyment of all the rights recognized in the Convention and the holistic development of the child”²⁶. A child’s best interests are a threefold concept: a substantive right, a fundamental, interpretative legal principle, and a rule of procedure²⁷ for interpreting and implementing all their rights that command States as well as the private sector to take active measures to respect children’s rights and promote their survival, growth, and well-being.

²² Committee on the Rights of the Child. *General Comment No. 26 (2023)* on children’s rights and the environment, with a special focus on climate change, para. 8.

²³ Committee on the Rights of the Child. *General comment No. 5 (2003)* on the general measures of implementation of the Convention on the Rights of the Child, para. 12; and *General Comment No. 12 (2009)* on the right of the child to be heard, para. 2.

²⁴ Committee on the Rights of the Child. *General comment No. 14 (2013)* on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), para. 26.

²⁵ Committee on the Rights of the Child. General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children’s rights, para. 8..

²⁶ Committee on the Rights of the Child. *General comment No. 14 (2013)* on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), para. 4.

²⁷ General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), para. 1

IV. The Role of the UN

The Guidance Note of the Secretary-General on Child Rights Mainstreaming recognizes that UN entities should take appropriate measures to support children's protection against violations of their rights resulting from business conduct by integrating systemic action on adverse business impact into their work and collaborating with business actors and regulators to promote and support due diligence and other measures.²⁸ Also, the Guidance Note underscores that in this context UN action should give primary consideration to the best interests of the child.

To achieve this, the current submission suggests that relevant UN bodies:

- develop appropriate modalities to support children's right to be heard²⁹ on business responsibility to respect their rights in the context of climate change, including the ocean-climate nexus, so that the understanding of their best interests is shaped by children's own views;³⁰
- apply the established mechanisms for monitoring and accountability to private sector activities led by the Committee on the Rights of the Child and grounded by a child-rights impact assessment,³¹ considering Article 3 of the Convention on the Rights of the Child. Accordingly, standards should be established and monitored to track and evaluate potential direct and indirect impacts on the climate and on the realization of children's rights;³²
- develop education materials to empower children to express their views on business responsibility to respect their rights;³³ and
- develop/strengthen means to protect children environmental human rights defenders when they take action in relation to business responsibility in the climate change context, including at the ocean-climate nexus.

V. States' obligations

²⁸ UN. *Guidance Note of the Secretary-General on Child Rights Mainstreaming*. 2023. Available at: <https://childrightsconnect.org/wp-content/uploads/2023/08/guidance-note-of-the-secretary-general-on-child-rights-mainstreaming_final_july-2023.pdf>. Accessed on Nov 23/2023.

²⁹ S Shields et al, POLICY BRIEF: A FRAMEWORK FOR FACILITATING CHILDREN'S PARTICIPATION IN INTERNATIONAL PROCESSES AT THE OCEAN-CLIMATE NEXUS (2023), https://oneoceanhub.org/wp-content/uploads/2023/08/Policy-Brief-A-Framework-for-Facilitating-Childrens-Participation-in-International-Processes-at-the-Ocean-Climate-Nexus_29.08.23.pdf

³⁰ Shields et al (n 11 above).

³¹ Committee on the Rights of the Child. *General comment No. 14 (2013)* on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), para. 99.

³² Committee on the Rights of the Child. *General Comment No. 26 (2023)* on children's rights and the environment, with a special focus on climate change, para. 78.

³³ M Strand et al, POLICY BRIEF: 10 KEY MESSAGES FOR REIMAGINING OCEAN LITERACIES THAT CONSIDER CHILDREN'S HUMAN RIGHTS TO DEVELOPMENT AND CULTURE (2023), https://oneoceanhub.org/wp-content/uploads/2023/10/Policy-Brief-10-key-messages-for-reimagining-ocean-literacies-that-consider-childrens-human-rights-to-development-and-culture_26.10.23.pdf.

According to General Comment 26, governments should guarantee a swift reduction of emissions by businesses and require them, along with financial institutions, to carry out environmental impact assessments and due diligence procedures for children's rights. This is to ensure that they can identify, prevent, mitigate, and account for their actions in addressing both current and potential adverse impacts on children's rights linked to climate change. This includes impacts stemming from both production and consumption activities, as well as those associated with their value chains and global operations.

Also, home states bear the responsibility in relation to any harm and climate change-related risks affecting children's rights in the sphere of business enterprises' extraterritorial activities and operations. This responsibility is contingent on a reasonable connection between the State and the conduct in question. Furthermore, home States should facilitate access to effective remedies for violations of rights. This involves collaborating to ensure that business enterprises engaged in transnational operations comply with relevant environmental standards aimed at safeguarding children's rights from climate change-related harm. Additionally, it entails providing international assistance and cooperation for investigations and enforcement proceedings in other states.

States should develop national policies and laws on just transitions so as to ensure the protection of children's human rights, including their right to a healthy environment, taking into account the documented instances of negative human rights impacts arising from current approaches to just transitions.³⁴ States should promote sustainable investment in and the utilization of renewable energy, energy storage, and energy efficiency that does not negatively impact on biodiversity and respect children's human rights, as well as in and nature-based climate solutions (including ocean-based climate action) that support the protection of children's right to a healthy environment. This should be particularly directed at State-owned or controlled enterprises and those extensively supported and serviced by State agencies. To support these efforts, States ought to enforce progressive taxation structures and implement stringent sustainability requirements for public procurement contracts. Additionally, States can foster community control over energy generation, management, transmission, and distribution, aiming to enhance accessibility and affordability of renewable technology, along with the provision of sustainable energy products and services, especially at the community level. Equally, States should carefully regulate and monitor business-led technological approaches to climate change mitigation and adaptation to ensure that these are effective measures that do not negatively impact on biodiversity and respect children's human rights.

States must also ensure that their obligations under trade or investment agreements do not hinder their capacity to fulfill human rights obligations. These agreements should actively promote swift reductions in greenhouse gas emissions and other measures to address the causes and effects of climate change. This includes facilitating investments in renewable

³⁴ Morgera, POLICY BRIEF: INTEGRATING HUMAN RIGHTS IN THE REGULATION AND OVERSIGHT OF BLUE ECONOMIES AND JUST TRANSITIONS (2023), https://oneoceanhub.org/wp-content/uploads/2023/09/Policy-Brief-INTEGRATING-HUMAN-RIGHTS_13.09.23-1.pdf.

energy that do not negatively impact on biodiversity and nature-based climate solutions (including ocean-based climate action) that support the protection of children's right to a healthy environment. It should also include controls of technology development and transfer for climate change mitigation and adaptation, to ensure that these are effective measures that do not not negatively impact on biodiversity and respect children's human rights. It is essential to regularly assess the climate change-related impacts on children's rights associated with the implementation of such agreements, allowing for corrective measures as deemed necessary.

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